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FEDERAL COMMUNICATIONS COMMISSION
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**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) |
| | ) MD Docket No. 95-3 |
| Assessment and Collection of Regulatory Fees for Fiscal Year 1995 | ) |
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**COMMENTS**

Teleport Communications Group Inc. ("TCG") hereby offers the following comments in response to the Commission's Notice of Proposed Rulemaking regarding the above-captioned proceeding.[1]

An important issue in this proceeding is ensuring that the methodology selected by the Commission for collecting its fees is fair and does not disproportionately burden one industry segment versus another. Unfortunately, the Commission's proposed method of calculating fees for the carrier category will disproportionately burden providers of competitive access services ("CAPs").

The Commission has proposed that the fees collected from Local Exchange Carriers and Competitive Access Providers for private line services should be based on "voice grade equivalent" circuit counts. Notice at paragraph 59. The difficulty with this approach is that it does not recognize that "equivalent" transmission capacities may represent very "un-equivalent" revenue opportunities.

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[1] Assessment and Collection of Regulatory Fees for Fiscal Year 1995, MD Docket No. 95-3, released January 12, 1995.

A few examples will suffice to demonstrate this fact. Under this Commission's collocation policies, CAPs are now able to compete for the "transport" portion of switched and special access services. This means that they can carry an interexchange carrier's traffic between the IXC's location and the LEC office, but due to the small scale of their own networks the CAP cannot effectively compete against the "last mile" of the LEC network. And because of LEC zone density pricing and other rate decreases, it is not unusual for LECs to offer DS3 transport services to IXCs for very low prices, often as little as about $300 per month per DS3, so that the revenue opportunity for the CAP from these available transport services is limited to that amount or less.[2]

However, the LEC is able to gather substantially higher amounts of revenues from the services that are interconnected to the transport DS3 service. For an end to end special access service, adding together the LEC's revenues from multiplexing and the DS0 end links to customer locations can mean that a DS3 transport service that provides the LEC (or CAP) with only $300 in revenues by itself can be the essential pathway to other services that provide the LEC with over $60,000 in additional monthly revenues.[3] Under the Commission's proposed methodology,

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[2]For example, NYNEX's DS3 channel termination rate, at its maximum volume level, charges as little as $561 for a channel termination. Term discounts of up to 40% are available, bringing the unit cost down to $336.60 per DS3 channel termination.

[3]Once a Special Access DS3 reaches the LEC office it must first be multiplexed, and then interconnected to LEC end link services. This requires one DS3:DS1 multiplexing element ($950 per month), 28 DS1:DS0 multiplexing elements ($418 each per

however, the CAP's $300 per month DS3 transport service and the LEC's $60,300 per month end to end DS3 service would be viewed as equivalent and each would be subject to the same fee payment.[4]

The same result obtains in the case of switched access. Once LEC term and volume discounts become available for switched access local transport, the per DS3 transport price can drop to the $300 per month level encountered in the case of special access, limiting the CAP's revenue opportunity to that small amount. That same, low priced transport service for the LEC can represent a far higher revenue opportunity. When connected to multiplexing and the LEC switch, it can represent over $145,000 in monthly revenues from multiplexing, local switching, residual interconnection charge, and carrier common line charges.[5] Again, the CAP's total revenue opportunity is only $300, while the LEC's is hundreds of times higher. Because the Commission's proposed

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month) and 672 four wire voice grade channel terminations ($71.48 each per month). This adds a total of $60,688.56 to the revenues from that DS3 transport facility. (All rates from NYNEX's FCC tariff.)

[4]TCG is not suggesting that NYNEX or other LECs should not be allowed to offer these interconnected services, merely that the Commission should recognize, in developing a fee structure, that "equivalent" transmission capacities may represent vastly different revenue opportunities.

[5]A switched access customer would have to purchase the local switching element ($.014568 per minute), residual interconnection element (.012995 per minute) and carrier common line element (.008269 per minute), or a total of 3.5832 cents/minute. Assuming only 6,000 minutes of use per DS0 trunk per month, that would represent $215 per month per DS0, or $144,475 per month per DS3. The cost of the necessary DS3:DS1 multiplexing element ($950 per month) would push the total revenues over $145,000 per month.a

fee schedule would regard each service as equivalent, it would impose a much higher effective "tax" on CAPs.

The proposed use of "equivalent voice grade services" as a means of allocating fee responsibility artificially exaggerates the importance of CAP transport service. Moreover, the Commission's alternative suggestion of an allocation based on "minutes" suffers from the same problem, in that it does not recognize that different network configurations and service offerings can mean that a minute of use carried over a CAP's transport service may represent a very tiny revenue opportunity, while the same minute carried on a LEC's network can represent a much larger revenue source.

Because of this flaw, the Commission's proposed fee structure would subject the CAP industry to a disproportionate regulatory fee burden. Such a result is even more unfair given that CAPs operate in a regulatory environment where barriers to entry remain high in most states, where CAPs have attracted only a small percentage of the revenues associated with interstate communication services, and where CAPs do not have all the same revenue streams available to support their investments that local exchange carriers do. At the same time, the services provided by CAPs supplement existing LEC facilities, while simultaneously giving captive ratepayers a choice and the inherent benefits that competition brings to consumers and society. The Commission, in the allocation of these fees, should aim to promote the growth of the CAP industry, through the fair and equitable distribution of fees among all market participants.

TCG therefore recommends that the Commission change its allocation of regulatory fees in the carrier category. It should abandon its proposed use of "equivalent voice grade" circuits as a means for allocating fees, because that measure does not recognize that equivalent circuits do not equal equivalent revenue. TCG recommends instead that the Commission use "net communications revenues" as its allocation method for these regulatory fees. Net communications revenues equals gross interstate communications revenues less payments to other carriers, a better measure of the relative financial status of different industry participants. This will not only be a far more competitively neutral approach than the Commission's initial proposal, but it will also promote the Commission's goal of creating a uniform, national, pro-competitive policy for interstate communication services. TCG's proposal would more accurately reflect the economic position of each of the entities within the category while providing them with the regulatory incentives to pursue growth in their networks and diversity in their product and service offerings.

This competitively neutral allocation format would indiscriminately assign regulatory fees to the entities who are in a position to accept the financial impact. The more dominant market participants who have achieved higher revenues as a result of historical regulatory advantages would be required to carry an appropriate portion of the costs of regulation. As the CAP industry's revenue base grows, it will be required to accept an increasing proportion of this cost in direct relation to its standing in the industry. But it would not be asked to shoulder that burden today, when it is not fair to do so.

In conclusion, the Commission should adopt a method of allocating its regulatory fees that is fair and competitively neutral, by allocating such fees based upon net operating revenues. This formula will require mature companies with the highest net operating revenues to assume a higher initial burden of regulatory costs in keeping with their superior market position. It will also avoid the disproportionate impact on CAPs that would result under the Commission's use of "equivalent circuit" measurements.

Respectfully submitted,

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February 13, 1995